REMARKS/ARGUMENTS

Reconsideration of the present application, as amended under Rule 116, is respectfully requested. Claims 1, 12-14 and 20 have been amended and claims 38 and 39 have been added. The amendments to independent claims 1 and 20 address the rejections in the outstanding Office Action, as discussed below, and to remove a limitation. The amendments to dependent claims 12-14 reflect the amendments to base claim 1. Added claim 38, dependent upon claim 1, contains the limitation removed from claim 1. Added claim 39, also dependent upon claim 1, further describes the claimed data acquisition agent.

Of previously pending claims 1, 3-21 and 23-30, all were rejected. Claim 1 was rejected under 35 U.S.C. §112, second paragraph, for indefiniteness. The Examiner found ambiguities in the steps of loading data, executing the transaction, collecting performance measurements, and sending the performance measurements. The language in all four of these steps have been amended so that a relevant portion of claim 1 now reads:

"...loading data responsive to the request for information onto the data acquisition agent from the information source;

continuing the transaction between the information source and the data acquisition agent by simulating a transaction previously recorded between a user machine, the user machine not the data acquisition agent, and the information source;

collecting performance measurements by the data acquisition agent for the transaction; and

sending the performance measurements by the data acquisition agent to a storage device."

Hence the objections for ambiguities should have been removed.

Substantively, claims 1, 3-21, and 23-30 were rejected under 35 U.S.C. §103(a) for obviousness over U.S. Patent No. 6,438,592, which issued August 20, 2002 to M.G. Killian and

U.S. Patent No. 5,459,837, which issued October 17, 1995 to F.S. Caccavale. The Examiner stated:

> "Referring to claims 1, and 20, Killian reference discloses connecting a data acquisition agent to the network...; however, Killian fail to disclose simulating a transaction previously recorded between a user machine and the information source.

> "Caccavale reference discloses simulating a transaction previously recorded between a user machine and the information source (Fig. 7; and col. 9, lines 23-30; col. 9, lines 64 through col. 10, lines 22.)

> "It would have been obvious to one of ordinary skill in the art at the time of the invention was made to incorporate Caccavale's teaching into Killian's method to perform transaction simulation tracking, so that the user can determine how efficiently server in the response to the transaction."

The Applicants assume that the Examiner has analogized the Applicants' claimed "information source" with one of Caccavale's servers 31-34, the claimed "data acquisition agent" with one of clients 21 with probes 22, and the claimed "user machine" with the BPM 40. See Fig. 1.

Independent claims 1 and 20 are distinguishable from the Caccavale patent by perusing the reference. Specifically, the cited reference does not teach "...simulating a transaction previously recorded between a user machine, the user machine not the data acquisition agent, and the information source," nor "...continuing the transaction between the information source and the data acquisition agent by simulating a transaction previously recorded...," as recited in Applicants' claim 1.

The Caccavale patent describes "transaction simulation tracking and application simulation tracking (col. 9, lines 21-22)," which, as an aside, uses terms differently from the Applicants. "Transaction" is used by Caccavale *et al.* in the sense of a set of basic server operations accomplishing an elemental goal (e.g., see col. 9, lines 33-36) and "application" is used in the sense of a collection of sets of basic operations directed toward a larger purpose, somewhat similar to the Applicants' use of "transaction." Nonetheless, even without arguing

over terminology, the Caccavale patent does not teach the Applicants' invention as recited in claims 1 and 20.

Caccavale simulates a transaction by measuring application level responses for server primitives. Col 9, lines 31-32. That is, only specified server primitive operations are tracked. A transaction is defined by the user or by the BPM (Broker Performance Mechanism) 40 when the user cannot identify the transaction(s). See col. 9, lines 46-50.

For user-defined transactions and assuming *arguendo* that a Caccavale transaction is the same as the Applicants' "transaction," the user simply defines a transaction, a set of server primitive operations, for simulation tracking with the BPM 40; he or she does not previously record them, as called for in claim 1. See col. 9, lines 31-45. Furthermore, if the transaction were to be previously recorded, the transaction would have been between a server and the subject client, while claim 1 calls for a transaction between an information source and "a user machine, the user machine not the data acquisition agent." Secondly, claim 1 calls for "...continuing the transaction between the information source and the data acquisition agent by simulating a transaction previously recorded..." On the other hand, Caccavale teaches that BPM 40 carries out the simulation with the servers 31-34. "Another feature of the present invention allows a central user, system manager, or client user to perform transaction simulation tracking and application simulation tracking... The BPM 40 can provide this service because it is continually measuring application level responses for server primitives...the BPM 40 can tabulate baseline response time information regarding this transaction from the baseline values for the relevant server primitive operations..." Col. 9, lines 20-41. The BPM 40 is not the Applicants' data acquisition agent. Rather, the BPM 40 is coupled "between a plurality of clients and a plurality of servers." Col. 2, lines 4-5; see Fig. 1.

Where the user cannot identify the critical transactions of an application for simulation tracking, the BPM 40 identifies these transactions by working with a selected client. "...[T]he application to be simulated and tracked is then run once on the client...to generate a list of server primitive operations for the application. The TSR component produces a file ...which contains a list of the server primitive operations associated with the application. The list is displayed to the user ...to allow the user the option of editing the list to form one or more smaller lists of server

primitive operations. The resulting list (or set of lists) is then saved as a transaction(s) and procedure SetTimerRoutine is called (as described above) to periodically calculate the response times for the transaction(s). Col. 10, lines 27-39. But again, claim 1 recites that the previously recorded transaction is between the information source and a user machine, not the data acquisition agent. Secondly, the BPM 40 carries out the simulation of the BPM-identified transaction with the servers. "Utilizing the information detected by the TSR, the BPM 40 identifies and tabulates the sequence of client server primitive exchanges contained in the application. Once the sequence of server primitives has been determined, the BPM 40 tracks the simulated performance of this sequence of transactions (hence, the performance of the application) over time, as described above with reference to the transactions simulation." Col. 9, lines 56-63. Claim 1, however, calls for, "...continuing the interaction between the information source and the data acquisition agent by simulating a transaction previously recorded...(emphasis added)."

Hence claim 1 is distinguishable from the Caccavale patent and should be allowable over the Caccavale and Killian patents.

Independent claim 20 has similar distinguishing language, i.e., "...wherein the data acquisition agent is configured to receive a previously recorded transaction between a user machine, the user machine not the data acquisition agent, and the web server and utilize the recorded transaction to execute the same transaction with the web server." Claim 20 should also be allowable for the arguments above.
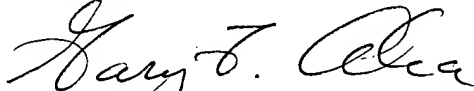
Dependent claims 3-19, 21 and 23-30 should be allowable for at least being dependent upon an allowable base claim.

Furthermore, new claims 38 and 39 have been added. Claim 38 includes the step of "connecting the data acquisition agent to the network," dropped from claim 1 and claim 39 adds a limitation about a browser to base claim 1.

Conclusion

For the foregoing reasons, Applicants believe all the pending claims 1, 3-21, 23-30 and 38-39 are in condition for allowance and should be passed to issue. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at (408) 446-7687.

Respectfully submitted,

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